IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 304 OF 2006.
IN
APPEAL FROM ORDER NO. 1028 OF 2002.

1. Jagdish Tukaram Mulik
2. Yogesh Tkaram Mlik
3. Vishal Tukaram Mulik
   Adults, residing at
   Survey No.13, Wadgaon Sheri,
   Pune 411 014. ... Petitioners.

Versus.

1. Sukumar Estates Ltd.
   Director Shri Lalitkumar K.Jain,
   a public limited company duly
   registered under the Indian
   Companies Act, 1956, having its
   registered office at Kumar Capital,
   2nd floor, 2413 East Street,
   Camp, Pune 411 001.

2. Vimalkumar Kesrimal Jain,
3. Kevalkumar Kesirmal Jain.
4. Inderkumar Kesrimal Jain,
5. Lalitkumar Kesrimal Jain,
   Adults, Occ.: Business,
   working for gain at Kumar Capital,
   2nd floor, 2413, East Street,
   Camp, Pune 411 001. ... Respondents.

Shri Nitin Jamdar for the Petitioners.
Shri Virendra Tulzapurkar, Senior Counsel with Mrs.Swati Deshpande i/by M/s.M.N.Bodhanwala & Co. for the Respondent No.1.
Shri V.P.Sawant for Respondents Nos.2 to 4.
Shri S.B.Deshmukh for Respondent No.5.

CORAM : ABHAY S.OKA, J.

DATED : 20th March, 2007.

ORAL JUDGMENT.:

1. Submissions of the learned Counsel appearing for

the parties were heard on the last date. The Petitioners are the original Plaintiffs. The Petitioners filed a suit inter-alia for declaration that the 6th Defendant in the suit (6th Respondent herein) has no right to enter into any transaction with the 1st Respondent (1st Defendant) in respect of the properties more particularly mentioned in paragraph 1(b) and (c) of the plaint. A declaration is also claimed that the original Defendants Nos.6 and 20 along with late Smt.Jijabai @ Laxmibai Shankarrao Tupe, late Smt.Krishnabai Haribhau Tingre and late Smt.Yashodabai Ganpatrao Khandave have no right to enter into any transaction with the 1st Respondent in respect of the properties, more particularly mentioned in paragraph 1(a) and (d) of the plaint. An application for temporary injunction was made by the Petitioners in the said suit. The said application for temporary injunction was rejected by the trial Court. Being aggrieved by the said order, the Petitioners preferred an Appeal from Order No.1028 of 2002 in this Court. In the said Appeal, a Civil Application bearing No.1337 of 2002 was taken out. On 16th April 2003, this Court granted ad-interim relief in terms of prayer clauses (b) and (d) of the said Civil Application. In the present Contempt Petition, the breach alleged is of the ad-interim relief granted in terms of prayer clause (d), which reads thus:

(d) Pending hearing and final disposal of the appeal from order the respondent No.1 through it themselves, their agents, servants and person authorised by them be restrained from selling mortgaging, creating third party interest in respect of the properties mentioned in prayer (b) and (c) of this application and the construction carried upon thereto.

2. The Appeal from order and the other connected matters were heard by this Court on 14th December 2004 and the Judgment was delivered on 18th January 2005. This Court dismissed the Appeal from Order preferred by the Petitioners. A Special Leave Petition was preferred by the Petitioners in the Apex Court. The said Special Leave Petition came up before the Apex Court on 20th February 2005. The said Special Leave Petition was dismissed by the Apex Court with a direction to expedite the hearing of the suit. The Apex Court observed that if any third party rights are created, the same shall be subject to the outcome of the suit and the person in whose favour the said rights, if any, are created shall be informed about the pendency of the suit by the party creating such rights. The case of the Petitioner is

that in breach of the ad-interim order passed by this Court on 16th April 2003, a deed of conveyance was executed by the fifth Respondent on 4th January 2005.

3. The learned Counsel for the Petitioners invited my attention to the deed of conveyance which is annexed to this petition. He pointed out that the fifth Respondent who is one of the Directors of the 1st Respondent-company has signed the said deed of conveyance as the Constituted Attorney of one Tukaram Sopanrao Mulik. The said Tukaram is the original 6th Defendant. He pointed out that the fifth Respondent has also signed the said document on behalf of the first Respondent company as a Director. He submitted that the said document clearly shows that in fact third party interests were created by the 1st and 5th Respondents. He placed reliance on a decision of the Apex Court in the case of Delhi Development Authority v/s. Skipper Construction Co.(P) Ltd. and another, [(1996) 4 SCC 622].

4. The learned Counsel appearing for the 1st Respondent submitted that there is no breach committed by the 1st Respondent as the sale deed has been executed by the 6th Defendant against whom this Court had not granted any interim or ad-interim relief. He submitted that the sale deed has been registered in the office of

the Sub-Registrar of Assurances in January 2005 and therefore, the present petition filed on 10th August 2006 is hit by section 20 of the Contempt of Courts Act, 1971. He submitted that in any case, on a plain reading of the sale deed, there is no breach committed by the 1st Respondent against whom ad-interim relief was granted.

5. I have considered the submissions. The ad-interim relief was granted by this Court only as against the 1st Respondent restraining the 1st Respondent from selling, mortgaging, creating third party interests in respect of the properties mentioned in prayer clauses (b) and (c) of the Civil Application for interim relief. A perusal of the sale deed dated 4th January 2005 shows that the 1st Respondent is a confirming party to the said sale deed. The said sale deed records that the development agreement has been already executed on 29th April 1991 in respect of the property in question in favour of the 1st Respondent-company. The sale deed records that after execution of the same, the rights of the 1st Respondent as a developer will remain unaffected. The sale deed also records that the property is in possession of the 1st Respondent in part performance of the agreement dated 29th April 1991. On a plain reading of the sale deed it appears that the 1st Respondent has not

purported to transfer in any manner the alleged rights claimed by the 1st Respondent in respect of the said property. In fact the sale deed protects the rights of the first Respondent as a developer notwithstanding the sale. It is true that the 5th Respondent herein, who was representing the 6th Respondent as his Constituted Attorney has signed the sale deed on behalf of the 6th Respondent. The submission of the learned Counsel for the Petitioner was that the power of attorney was executed in favour of the 1st Respondent in his capacity as representative of the 1st Respondent and therefore, it is the 1st Respondent which has purported to execute the sale deed.

6. Admittedly there is no interim relief granted by this Court against the 6th Defendant (6th Respondent herein). Even if it is assumed that the 1st Respondent has acted on behalf of the 6th Defendant, obviously the document purports to transfer right, title and interest of the 6th Defendant in and not that of the 1st Respondent. Therefore, there is no transfer of right title or interest of the party against whom this Court had passed an ad-interim order. Reliance placed on the decision of the Apex Court in the case of Delhi Development Authority (supra) will not help the Petitioner. Even if Corporate veil is lifted, no case of breach of order can be established.

7. The breach alleged is of ad-interim relief passed in Appeal from Order by this Court. The Appeal from Order was dismissed on merits by this Court and the Special Leave Petition filed by the Petitioner herein has been dismissed by the Apex Court by observing that the interests created in respect of the suit property during the pendency of the suit will be subject to the final outcome of the suit. The trial Court, this Court and the Apex Court have held that the Petitioners were not entitled to the equitable relief of temporary injunction.

8. Considering the aforesaid factual aspects, this is not a fit case for taking action against the Respondents under the Contempt of Court Act, 1971. The notice issued on 30th November 2006 is accordingly discharged. The Contempt Petition is disposed of.

9. It is made clear that the observations made in this order are for the limited purpose of considering the question whether any action needs to be taken against the Respondents under the provisions of the Contempt of Courts Act, 1971. It is made clear that all contentions of the parties in the pending suit are expressly kept open.

Judge.